IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 1491 of 2001(C)

PETITIONER:

SHANTHINI REBACA MATHEW,
AYANIKATTIL BUNGLOW,
PIDAVOOR, PATHANAPURAM.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.V.B.HARI NARAYANAN

RESPONDENTS:
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1. COMMISSIONER OF INCOME TAX, THIRUVANANTHAPURAM.

2. DEPUTY COMMISSIONER OF INCOME TAX (APPEALS), THIRUVANANTHAPURAM.

3. INCOME TAX OFFICER, WARD - II, KOLLAM.

4. THE TAX RECOVERY OFFICER,
TAX RECOVERY OFFICE, USHAS COMPLEX,
VADAYATTUCOTTA,
KOLLAM – 691 001.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 1491/2001

ORDER ON CMP NO. 2478 OF 2001 IN OP NO. 1491/2001.

DISMISSED.

13/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ASSESSEMNT ORDER PASSED ON 15/03/1993 UNDER SECTION 144 OF THE INCOME TAX ACT ISSUED by the 3RD RESPONDENT.

P2 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 24/05/96.

P3 : COPY OF THE ORDER DATED 06/02/97 ISSUED BY THE 1ST RESPONDENT.

P4 : COPY of the NOTICE DATED 12/10/98 ISSUED by the 3RD RESPONDENT to the PETITIONER. NOTICE NO. 46-804-PZ-0230/W-3/KLM.

P5 : COPY OF THE APPLICATION DATED 27/12/99 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P6 : COPY OF THE COMMUNICATION DATED 01/12/2000 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 1491 of 2001

Dated, this the 13th day of November, 2007

J U D G M E N T

Petitioner is challenging the assessment completed by the 3rd respondent, which is confirmed in appeal and revision by the Commissioner of Income Tax in Section 264 proceedings. Income assessed pertains to the investment in a truck, which according to the petitioner is purchased with borrowed capital. Learned counsel for petitioner submitted that the matter was re-presented in revision by the petitioner's husband before the Commissioner. Even though during hearing Commissioner directed the petitioner to engage a chartered accountant, without waiting for the petitioner to engage the chartered accountant, the Commissioner passed the order. Therefore, one more opportunity is prayed for, in this Court, by learned counsel for petitioner.

2. I have heard standing counsel for respondents also.

3. Even though petitioner could not avail the opportunity to produce the records in appeal or revision, I feel one more opportunity can be granted because petitioner is not a regular assessee and the only assessment they have made on the petitioner is Ext.P1. Moreover, having regard to the nature of demand, levy

of interest has to be quashed because of the stay granted by this Court during pendency of the original petition for the last six years.

4. In the circumstances, I dispose of the original petition granting one more opportunity to the petitioner to produce the records before the 3rd respondent. Petitioner will take a posting from the 3rd respondent or the present officer in-charge of the matter, after producing a copy of this judgment, and produce the records before the 3rd respondent to verify and modify the assessment. I direct the 3rd respondent to modify the assessment, if records are produced by the petitioner. If assessment is sustained, then petitioner can be given an opportunity to make an application under Section 117A, Rule 40, for waiver of interest before the 3rd respondent. Third respondent is directed to consider waiver of interest taking into account the circumstances in which the writ petitioner is placed.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg